

October 17, 2022

Via ECF

Honorable Lorna G. Schofield  
U.S. District Court  
Southern District of New York  
Thurgood Marshall Courthouse  
40 Foley Square  
New York, NY 10007

Re: *In re Foreign Exchange Benchmark Rates Antitrust Litigation*  
Case No. 1:13-cv-07789-LGS

Dear Judge Schofield:

On Sunday October 16, 2022, pursuant to Paragraph 11 of the Joint Trial Procedures Stipulations (ECF No. 1917), Credit Suisse alerted Plaintiffs that it seeks to admit into evidence five charts. None of these charts should be admitted into evidence. DTX2026-2030 (attached hereto as Exhibit A) are all hearsay, lack foundation, and suffer from other infirmities. At most, these documents could be used with a witness as a demonstrative, but Credit Suisse seeks admission of these slides into evidence. Importantly, because of the stipulation that no party would seek to enter any additional evidence under 1006, Credit Suisse cannot argue that these demonstratives should come in as summary exhibits.

### **Proposed Exhibits DTX2026-2030 Are Inadmissible**

Credit Suisse has failed to show that any of the charts it seeks to admit into evidence meet the standards for admission. Credit Suisse “has not provided the Court with a basis to properly authenticate the chart under Fed. R. Evid. 901, which requires the proponent to “produce evidence sufficient to support a finding that the item is what the proponent claims it is.”” *PA Realty Grp., LLC v. Hornbeck*, Case No. 3:16-cv-630, 2017 WL 4169409, at \*6 (D. Conn. Sept. 19, 2017) (quoting Fed. R. Evid. 901(a)). Credit Suisse has made no effort to authenticate the charts. DTX2026-28 and DTX2030 neglect to even cite a source for the purported data other than in the title.

Beyond this initial failure, all five charts are hearsay to which no exception applies. *See Loussier v. Universal Music Grp., Inc.*, No. 02-cv-2447, 2005 WL 5644421, at \*6 (S.D.N.Y. July 14, 2005) (excluding chart where “the information contained in the [c]hart is inadmissible hearsay”); *Faunus Grp. Int'l, Inc. v. Ramsoondar*, No. 13-cv-6927, 2015 WL 4557132, at \*9 (S.D.N.Y. July 22, 2015) (chart purporting to show damages inadmissible under section 1006 of the Federal Rules of Evidence and also inadmissible hearsay where “the chart – created for litigation and compiling the proponent’s alleged damages – neither carries ‘circumstantial guarantees of trustworthiness,’ [] nor ‘is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts’” (citations omitted)).

DTX2029 is plainly hearsay. It purports to present “Dr. Mathur’s Concentration Analysis” and lists as its source “Euromoney, DTX 574.” Credit Suisse seeks to admit this slide for the truth

Honorable Lorna G. Schofield

October 17, 2022

Page 2

of the matter asserted, but it lacks any indicia of trustworthiness as presented. To the extent Credit Suisse wishes to use the document as a demonstrative with Dr. Mathur's testimony, Plaintiffs have informed Credit Suisse they have no objection that cannot be dealt with on cross, but that is not what Credit Suisse is seeking. It is not admissible.

Finally, even if admissible (and they are not) the charts are highly misleading. DTX2026-28 and DTX2030 each employ a different y-axis scale, materially distorting the presentation of the data. This distortive scale is used not for understandable reasons of scale, but to bring artificial emphasis to Credit Suisse's argument. Such charts would confuse the jury, and that is another basis upon which to preclude the exhibits.

DTX2029 is misleading as well. The scale fails to explain what is even being measured. It cites Euromoney data, which Plaintiffs agree contains market-share data, but there is no explanation as to what might be included in the gray and blue bars. Is it all banks in the world? Is it the 16 coconspirator banks? There is no way to tell. For this additional reason, the slide should be precluded.

Respectfully submitted,

SCOTT+SCOTT ATTORNEYS AT LAW LLP    HAUSFELD LLP

s/ Christopher M. Burke

Christopher M. Burke  
600 W. Broadway, Suite 3300  
San Diego, CA 92101  
Telephone: 619-233-4565  
cburke@scott-scott.com

s/ Michael D. Hausfeld

Michael D. Hausfeld  
888 16th Street, NW, Suite 300  
Washington, DC 20006  
Telephone: 202-540-7200  
mhausfeld@hausfeld.com

*Attorneys for Plaintiffs*